IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1594 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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RAVINDRA DINUBHAI KHATRI & 2 - Appellant(s)
Versus
ABHYAKUMAR SARABHAI ZAVERI - Defendant(s)

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Appearance :
MR ARUN H MEHTA for Appellant(s) : 1 - 2.MS AVANI S MEHTA for Appellant(s) : 3,
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/09/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 27.06.91 passed by the Motor Accident Claims Tribunal (IV-A) at Ahmedabad in Motor Accident Claims Petition No. 67 of 1986 whereby the Tribunal awarded a sum of Rs. 87,000/- by way of compensation payable to the original claimant from the original opponents.

2. Looking to the memo of appeal I find that the grounds for assailing the impugned judgement and award

are grounds entirely on the merits of the Award and in respect of the quantum of the award. No grounds are urged on the basis of statutory defences permissible under section 149(2) of the said Act.

3. Even otherwise, during the course of hearing learned counsel for the appellant is unable to urge any of such statutory grounds.

4. The Apex Court has clearly laid down in the case of Shankarayya Vs. United India Insurance Company Limited, reported in AIR 1998 SC 2968 (=1983(3) SCC 140) that the order passed by the Tribunal under section 170 must be an order in writing and it must disclose the reasons for granting permission to the insurer to take up defences available to the owner an driver. If these conditions are not satisfied by the order actually passed by the Tribunal, the said order would be of no effect. The aforesaid principle has been followed by this Court in the case of New India Assurance Co. Vs. A.B. Dave, reported in 2006(2) GLR 1362 wherein it is held that the Insurance Company is not entitled to contest proceedings on merit in absence of reasoned order in writing from M.A.C. Tribunal.

5. No grounds based on statutory defences available to

the insurer under section 149(2) of the Act are pleaded or urged.

6. Even otherwise the respondent has already expired. In that view of the matter, no fruitful purpose shall be served by passing any further order in the matter.

7. In the premises aforesaid, the appeal is not maintainable. Therefore, I find that there is no substance in the present appeal. Accordingly the present appeal is dismissed with no order as to costs.

[K.S. JHAVERI, J.]

Divya//